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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

DON C. BENNETT, COMERLIS  
DELANEY, GARY ROBINSON, DARREN  
SCOTT, and JON HOTZLER, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

SIMPLEXGRINNELL, LP,  
  
Defendant.

Case No. 11-1854 JST (NJV)

***CORRECTED* STIPULATION AND  
~~PROPOSED~~ ORDER REGARDING  
EXPERT DISCOVERY, MOTION  
SCHEDULES, AND MEDIATION**

Complaint Filed: April 18, 2011  
First Amended  
Complaint Filed: June 27, 2011  
Second Amended  
Complaint Filed: June 26, 2012  
Third Amended  
Complaint Filed: July 17, 2013

Trial Date: None Set  
Judge: Honorable Jon S. Tigar

1 WHEREAS, Plaintiffs served the Expert Report of Robert Fountain, Ph.D., on November  
2 25, 2013;

3 WHEREAS, Defendant served the rebuttal report of Robert Crandall, M.B.A., on  
4 December 16, 2013;

5 WHEREAS, Defendant took the deposition of Dr. Fountain in Portland, Oregon on  
6 December 18, 2013;

7 WHEREAS, Defendant filed two motions on December 19-20, 2013: a Motion to Preclude  
8 the Expert Report and Testimony of Dr. Robert Fountain, and a Motion to Deny Class Certification  
9 on December 19, 2013. Both motions centered on Dr. Fountain's November 25, 2013 report, and  
10 both motions cited to deposition testimony taken from his deposition;

11 WHEREAS, on January 8, 2014, Plaintiffs served a "Revised Report on Bennett vs.  
12 SimplexGrinnell, Estimates of Damages from Nonpayment of Prevailing Wages," in which Dr.  
13 Fountain revised his written report and the underlying computer programs that produce his  
14 conclusions. In the cover email associated with this report, Plaintiffs' counsel asserted that the  
15 revised report makes minor corrections and does not change Dr. Fountain's methodology;

16 WHEREAS, on January 13, 2014, Defendant sent Plaintiffs a letter objecting to what it  
17 viewed as an untimely and improper report. Defendant further indicated that it disagreed with  
18 Plaintiffs about the extent of the changes, and stated that it believed grounds existed to move to  
19 strike the report. *See* Fed. R. Civ. P. 37(c).

20 WHEREAS, in an effort to meet and confer about the possible motion to strike, Defendant  
21 proposed an alternative resolution to motion practice, which the parties have adopted and  
22 incorporated into this stipulation after further discussion and refinement. The parties agree that the  
23 mutual agreements and promises constitute valid consideration. The terms of the stipulation are as  
24 follows:

25 -- Defendant agrees not to file a motion to strike the Revised Report, and further, it  
26 agrees to accept a Second Revised Report that makes one additional change to the Revised Report,  
27 namely, it eliminates approximately 800 rows of "ACE data" used in Dr. Fountain's original  
28 report;

-- Plaintiffs agree that, irrespective of what they learn at Dr. Fountain's second deposition, or at any other time in the course of this litigation, any further revisions to Dr. Fountain's report shall be grounds for striking the report, except that Dr. Fountain can apply the same methodology, programs and techniques to any new data that is provided by SimplexGrinnell, as the case gets closer to trial, to address any work performed beyond the last date for which Dr. Fountain has been able to complete his analysis; and

-- The acceptance of a revised report will require changes to the existing pretrial schedule, and the parties agree upon and propose the following schedule:

- January 27, 2014: Plaintiffs may serve a second revised report, along with a copy of the backup programs, raw data, revised data files, and any intermediate data files prepared or used in conjunction with the second revised report;
- February 13, 2014: Deadline to depose Dr. Fountain (up to seven hours);
- February 20, 2014: Deadline to serve rebuttal report of Robert Crandall;
- March 4, 2014: Deadline to depose Robert Crandall (up to seven hours);
- March 27, 2014: Deadline for parties to file dispositive motions, motions relating to class certification, and *Daubert* motions. Such motions shall be filed on regular notice in accordance with Local Rule 7-3.
- June 2, 2014: Deadline for mediation.

WHEREAS, the parties have agreed that if the Court does not approve the stipulation, then the stipulation is void, and Defendant may proceed with a motion to strike pursuant to Rule 37(c).

IT IS THEREFORE STIPULATED AND AGREED AS FOLLOWS:

1. By January 27, 2014, Plaintiffs shall serve a second revised report of Dr. Robert Fountain in accordance with the terms stipulated above, along with a copy of the backup programs, raw data, revised data files, and any intermediate data files prepared or used in conjunction with the second revised report (collectively, the "Second Revised Fountain Report").

2. The Second Revised Fountain Report shall be accepted as timely filed and shall constitute Plaintiffs' expert report;

3. Defendant shall have until February 13, 2014 to depose Dr. Fountain for up to seven hours;

4. The deadline for Defendant to serve its rebuttal expert report shall be February 20,

2014;

5. Plaintiffs shall have until March 4, 2014 to depose Defendant's rebuttal expert;

6. Defendant shall withdraw without prejudice its pending Motion to Preclude the Expert Report and Testimony of Dr. Robert Fountain (Docket No. 177) and its Motion to Deny Class Certification (Docket No. 176);

7. The deadline for all parties to file dispositive motions, motions relating to class certification, and *Daubert* motions shall be March 27, 2014;

8. The deadline for mediation shall be June 2, 2014;

9. Irrespective of what Plaintiffs learn at Dr. Fountain's second deposition, or at any other time in the course of this litigation, any further revisions to Dr. Fountain's report shall be grounds for striking the report, except that Dr. Fountain can apply the same methodology, programs and techniques to any new data that is provided by SimplexGrinnell, as the case gets closer to trial, to address any work performed beyond the last date for which Dr. Fountain has been able to complete his analysis

Dated: January 17, 2014

Respectfully submitted,

By: /s/ Raymond C. Fay

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*Attorneys for Plaintiffs and Proposed Class*

1 Dated: January 17, 2014

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16 *Attorneys for Defendant SimplexGrinnell LP*

**ATTESTATION**

Pursuant to General Order 45(X), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: January 17, 2014

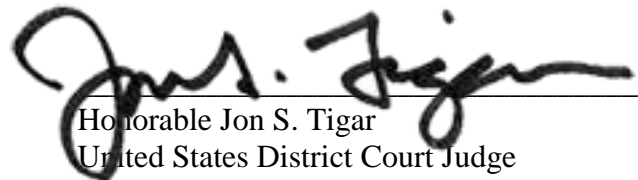
By: /s/ Dominick Capozzola

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~~[PROPOSED]~~ ORDER

Pursuant to the Stipulation of the parties and GOOD CAUSE APPEARING, IT IS SO ORDERED that the Stipulation is accepted by the Court and that the Scheduling Order in this case is revised accordingly.

DATED: January 21 2014



Honorable Jon S. Tigar  
United States District Court Judge